IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING FOAMS PRODUCTS LIABILITY LITIGATION)) MDL No. 2:18-mn-2873-RMG)
LITIGATION	This Document Relates to:
	David G. Tibbetts 2:22-cv-00373
;)

<u>DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' CLAIMS FOR FAILURE TO SERVE AN EXECUTED AND COMPLETED PLAINTIFF FACT SHEET</u>

The Defense Leadership respectfully submits this Motion to Dismiss requesting that the plaintiff, David G. Tibbetts have his claims dismissed for failure to serve an executed and completed Plaintiff Fact Sheet ("PFS") as required by Case Management Order No. 5 ("CMO 5") [ECF Dkt. No. 205]. The PFS was due on May 17, 2022. The grounds for this motion are as follows:

- 1. Mr. Tibbetts failed to submit a completed PFS within the time prescribed under Paragraphs 22 and 23 of CMO 5.
- 2. In accordance with procedures set forth in CMO 5, Paragraph 15, Defendants' Liaison Counsel served counsel for the plaintiff, The Cheek Law Firm, The Lausten Group, LLC and Wright & Gray, with a Notice of Non-Compliance on June 7, 2022. A copy of the Notice of Non-Compliance is attached to this motion as **Exhibit A**.
- 3. As further required by CMO 5, Paragraph 15, the Notice of Non-Compliance specified that within fourteen (14) days of receiving the Notice, Plaintiff shall (1) tender an executed and completed PFS, (2) if he or she has in fact tendered an executed fact sheet, inform

the Defendant of the date on which it was served, or (3) meet and confer with Defendants regarding any claimed good cause for failure to do so within the time required. *See* Exhibit A.

- 4. The fourteen (14) day period specified in the Notice of Non-Compliance has expired. As of the date of this motion, Mr. Tibbetts has not tendered an executed and completed PFS or otherwise identified a good cause for failing to tender an executed and completed PFS.
- 5. Therefore, in accordance with the procedure outlined in CMO 5, Paragraphs 16a.-c., the Defense Leadership now respectfully moves this court to dismiss the claims of David G. Tibbetts without prejudice, subject to reinstatement only if Mr. Tibbetts serves an executed and completed PFSs within 14 days of dismissal as described in Paragraphs 22-26 of CMO 5 and Paragraph 3 of CMO 5E.

DATED: July 14, 2022

Respectfully submitted,

By:/s/ Joseph G. Petrosinelli

Joseph G. Petrosinelli (Defendants' Co-Lead Counsel) Williams & Connolly LLP 725 Twelfth St., N.W. Washington DC 20005 jpetrosinelli@wc.com (202) 434-5547

By:/s/ Michael A. Olsen

Michael A. Olsen (Defendants' Co-Lead Counsel) Mayer Brown LLP 71 South Wacker Drive Chicago, IL 60606 molsen@mayerbrown.com (312) 782-0600

By:/s/ David E. Dukes

David E. Dukes (Defendants' Co-Liaison Counsel) Nelson Mullins Riley & Scarborough LLP 1320 Main Street / 17th Floor Post Office Box 11070 (29211-1070) Columbia, SC 29201 david.dukes@nelsonmullins.com (803) 799-2000

By: /s/ Brian C. Duffy

Brian C. Duffy (Defendants' Co-Liaison Counsel) Duffy & Young LLC 96 Broad St. Charleston, SC 29401 bduffy@duffyandyoung.com (843) 720-2044

Defense Leadership Counsel

Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that, this 14th day of July 2022, I have electronically filed a copy of the above and foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to counsel of record.

/s/ David E. Dukes